

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SB 602

INTRODUCER: Senator Justice

SUBJECT: Contamination Notification

DATE: February 16, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Kiger	EP	Favorable
2.			CA	
3.			GA	
4.				
5.				
6.				

I. Summary:

The bill amends s. 376.30702, F.S., and expands the requirements for public notification of the discovery of contamination to include property owners, presidents of any condominium associations or sole owners of condominiums and lessees and tenants of record in the vicinity. It requires local governments to mail the notice to executive officers and affected homeowners' or neighborhood associations. From the initial sampling point where a contaminant was discovered, any properties identified on a contaminant plume map within a 250 foot radius would also need to be notified in accordance with s. 376.3071(5), s. 376.3078 (4), s. 376.81, F.S., or in conjunction with a permitted solid waste management facility subject to a ground water monitoring plan. Additionally, notice of the presence of contamination, with specific information provided by the Department of Environmental Protection's (DEP) rule, would have to be sent to a specified list of home owner associations, city, and state representatives. Further, it would expand the current requirement to notify the school's superintendent, and, in turn, expand the school's requirements to notify teachers and parents or guardians of students attending public and private schools and child care facilities that are within a 500-foot radius of certain categories of contaminated sites and within a 250-foot radius of other categories of contaminated sites.

The bill amends s. 376.30702, F.S.

The bill will take effect July 1, 2010.

II. Present Situation:

Sections 376.30701, .3071, .3078, and .81, F.S., authorize the DEP and persons responsible for contaminated site rehabilitation to use risk-based corrective action (RBCA) when cleaning up such

sites. Each of these statutes also requires notification of affected parties when the DEP approves a cleanup plan that allows contamination to remain beyond the boundaries of the source property while cleanup is underway. These provisions are designed to facilitate early notification of the discovery of contamination. Parties that fail to comply with the requirements are subject to penalties outlined in s. 376.302, and 403.161(1) (b) F.S., which may include fines and civil litigation if good faith efforts have not been followed.

In 2005, the legislature determined that it was necessary to provide notification of parties potentially affected by contamination as soon as it was discovered to be beyond property boundaries rather than waiting until a cleanup plan was approved. The 2005 legislature established s. 376.30702, F.S. It requires that if during any site rehabilitation work done pursuant to any of the RBCA statutes, contamination is discovered beyond the property boundaries of a site being rehabilitated, then the owners of the property where the contamination is discovered must be notified. However, this notification is only required to be provided for specific properties from which samples are actually collected and analyzed in a laboratory. Consequently, some people who may be affected by contamination may not be notified of its presence if samples are collected only from the property of the contaminated site under investigation, if samples are collected in a road right-of-way rather than on private property, or if not all parcels in the vicinity of a contaminated site are sampled. Additionally, if the property at which contamination has been discovered is a school as defined in section 1003.01, F.S., (i.e. public schools) the DEP is required to direct the local school board to notify the teachers and parents or guardians of students attending the school of the contamination.

The contents of the notification include some of the following requirements:

- a listing of all record owners of any real property;
- separate tables that list the sampling location;
- sampling date, name of contaminants detected above cleanup target levels;
- the contaminant concentrations and whether clean up is based on health, nuisance, organoleptic, or aesthetic concerns;
- a vicinity map; and
- other specific requirements outlined in statute.

Additionally, DEP has rules and provisions in place to address businesses and property owners that regularly deal with potentially harmful pollutants. For example, there are a large number of sites eligible for petroleum and dry-cleaning solvent cleanup programs. These businesses are taxed to fund this program, and are required to clean-up, when contamination occurs, on these sites. DEP closely monitors this program, including an approved standard operation of procedures manual and approved list of clean-up contractors, to ensure the environment and the public's health is protected.

III. Effect of Proposed Changes:

Section 1. Amends s. 376.30702(1), F.S., to expand the findings, intent and applicability subsection to clarify that current contamination notification requirements also apply to site rehabilitation activities conducted pursuant to an administrative or court order.

Amends s. 376.30702(2), F.S., to expand the initial notice of contamination subsection to clarify that current contamination notification requirements also apply to site rehabilitation activities

conducted pursuant to an administrative or court order. Provides an option to provide a contaminant plume map in addition to a vicinity map and data tables in the notification package submitted to the DEP.

Substantially amends s. 376.30702(3), F.S., expanding notification requirements to include :

- the senior elected local official representing the affected area;
- the senior administrative local official representing the affected area;
- the school district superintendent representing the affected area;
- the elected state and federal officials representing the affected area;
- and all real property owners, presidents of any condominium associations or sole owners of condominiums, and lessees and tenants of record of the property at which site rehabilitation is being conducted, if different from the person responsible for site rehabilitation.

Additionally it will require notification of all real property owners, presidents of any condominium associations or sole owners of condominiums, lessees and tenants of record of any properties within a 500-foot radius of each sampling point at which contamination is discovered if it is discovered beyond the property boundaries of a property at which site rehabilitation was initiated pursuant to s. 376.30701, F.S., or an administrative or court order. Requires notification of all real property owners, presidents of any condominium associations or sole owners of condominiums, lessees and tenants of record of any properties within a 250-foot radius of each sampling point at which contamination is discovered if it is discovered beyond the property boundaries of a property at which site rehabilitation was initiated pursuant to ss. 376.3071(5), .3078(4), .81, F.S., or at, or in connection with, a permitted solid waste management facility subject to a groundwater monitoring plan.

Provides an option to notice based on a plume map, if available, for properties identified during site rehabilitation being conducted pursuant to ss. 376.3071(5), .3078(4), or .81, F.S., or at, or in connection with, a permitted solid waste management facility subject to a groundwater monitoring plan. Provides direction on how notice to local governments and to property owners, lessees and tenants must be provided. Requires the DEP to verify within 30 days after receiving notice of the discovery of contamination that the person responsible for site rehabilitation has complied with notice requirements and authorizes the DEP to pursue enforcement under Chapters 376 and 403, F.S., if notice has not been provided appropriately. Removes an outdated provision from the statute as originally adopted that required the DEP to use the information it possessed at the time (September 1, 2005) to provide notices to all record owners of property at which contamination had been discovered beyond property boundaries. Requires that if the property at which contamination has been discovered is the site of a public school, the DEP must mail a copy of the notice to the superintendent of the appropriate school district and direct the superintendent to provide actual notice annually to teachers and parents or guardians of students attending the school. Expands school notification to require that similar notification and direction be provided for private K-12 schools and child care facilities. Requires that if any property within a 500-foot radius of a property at which contamination has been discovered during site rehabilitation pursuant to s. 376.30701, F.S., or an administrative or court order, is the site of a public school, the DEP must mail a copy of the notice to the superintendent and direct the superintendent to provide actual notice annually to the principal of the school. Requires that similar notification and direction be provided if any property within a 250-foot radius of a property at which contamination has been discovered during site

rehabilitation pursuant to ss. 376.3071(5), .3078(4), .81, F.S., or at, or in connection with, a permitted solid waste management facility subject to a groundwater monitoring plan is the site of a public school.

Creates s. 376.30702(4), F.S., to require local governments to send a copy of the notice to the president or comparable elected officer of each homeowners' or neighborhood association in the potentially affected area.

Creates s. 376.30702(5), F.S., to direct the DEP to recover its costs for postage, materials and labor associated with notification from the responsible party, unless site rehabilitation is eligible for state-funded cleanup pursuant to ss. 376.3071(5) or .3078(4), F.S.

Section 2. The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of contaminated property may be more vulnerable to lawsuits simply because of increased public awareness of the presence of contamination. Property owners will benefit from more information about the extent of contamination in their vicinity. However, if contamination does exist, or is presumed to exist, this may adversely affect their property's value. Private K-12 schools and child care facilities will incur increased costs to annually notify teachers and parents or guardians attending the school.

C. Government Sector Impact:

DEP will incur an increase in costs to identify and notify a large number of property owners, lessees and tenants each year that fall under the state-funded cleanup programs. These costs will continue for an indeterminate time because of the large number of sites eligible for the petroleum and dry cleaning solvent cleanup programs. There will also be expenditures to pay contractors tasked with identifying parcel owners, lessees, and tenants and generating and mailing notice letters. As most local governments own contaminated property, they may experience indeterminate costs associated with responding to resident inquiries about notices they receive from DEP. School districts will also experience increased costs for creating and mailing letters to teachers, parents, and guardians of schools within a 250 foot radius of a contaminated site. The Department of Health (DOH) may experience an increase in resident requests for information on public health impacts of contamination on or near their residences and drinking water supplies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.